

Czechia – Nejvyšší správní soud

[Recent Situation]

Since the 1st January 2003, the Czech Republic has its new administrative judiciary. Newly shaped judicial service provides protection for individual public-law rights of natural persons and legal entities, reviewing decisions, misuse of power or inactivity of state administrative authorities and territorial and professional self-government. Administrative decisions involving private-law rights are reviewed by general courts in civil judicial procedure. According to respective constitutional provision, *Nejvyšší správní soud* (Supreme Administrative Court) was established as the last resort of public-law administrative judiciary. Regional courts provide control of administrative authorities as the courts of the first instance.

[Constitutional Base]

Ústava České republiky (The Constitution of the Czech Republic) contains an exhaustive list of courts. *Listina základních práv a svobod* (The Charter of Basic Rights and Freedoms) requires full judicial review if basic rights and freedoms are involved. Similar requirement, embodied in the right to a fair trial of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, as seen by the European Court of Human Rights, provided arguments for a milestone Constitutional Court judgement (2001) which accelerated the already often required reform of Czech administrative judiciary. The judgement abolished the former legislative framework of judicial control of executive which excluded review of fact findings and re-evaluation of imposed duties and obligations.

[Legislation for Administrative Judiciary]

The reform of administrative judiciary of 2002 has been introduced by several laws. The cornerstone of administrative judiciary is *Soudní řád správní* (Code of Administrative Justice, No. 150/2002 Coll.). Parallel legislative framework for private-law administrative judiciary was established as the new version of the (previously annulled) 5th section of *Občanský soudní řád* (Code of Civil Procedure). Possible disputes of competence between administrative and civil judiciary are handled by special Act on decision-making in some competence contests. Legal framework, based on Code of Administrative Justice, is completed with internal ordinances and codes of practice of respective courts.

[Nejvyšší správní soud]

Nejvyšší správní soud (Supreme Administrative Court) is operational since January 2003. Its seat is Brno, unofficial judicial capital of Czech Republic (the city hosts the Constitutional Court and the Supreme Court, too). *Nejvyšší správní soud* has 21 judges, it is administered and represented by the president and the vice-president of the Court. Judges – appointed for indefinite term by the President of the Czech Republic on proposal of

the Minister of Justice - are assigned to court divisions. Nowadays, two court divisions exist: (1) the Financial-administrative division and (2) the Social-administrative division. Judges usually hear and decide cases in three-member benches (panels). Extended benches contribute to uniformity of case-law. Every judge is assisted by one or more referendaries (judicial assistants). The Court has necessary administrative and technical support staff and special departments (informatics and telecommunication, publishing, press or European law). Total number of its employees (judges excluded) is 68.

[Regional Courts]

There are no special administrative courts of the first instance. Therefore, *Krajské soudy* (regional courts) include sections of administrative judiciary. Seven regional courts are located in Prague, Brno, Ostrava, Ústí nad Labem, Plzeň, České Budějovice and Hradec Králové. The 8th court with the same position is *Městský soud v Praze* (Prague City Court). These courts have 110 administrative judges (all full-time career judges, no lay judges and external experts in administrative judiciary). Regional courts decide in three-judge benches, enumerated administrative law matters are decided by single judge.

[First Instance Procedures]

Regional courts decide complaints (actions, indictments) against decisions, inaction or unlawful interferences, instructions or enforcements of and from administrative authorities if public-law rights are involved (administrative decisions in private-law matters are adjudicated by ordinary courts in civil judicial procedure). Reviewed administrative decisions must be final, all administrative remedies need to be unsuccessfully exhausted. Majority of caseload are asylum, tax and social security cases.

[Cassation Complaints]

The most important task of *Nejvyšší správní soud* are cassation complaints, an extraordinary remedy against judgements of the courts of the first instance in administrative judiciary.

[Requirements for Cassation Complaints]

Code of Administrative Justice contains exhaustive list of grounds for cassation complaints: incorrect consideration of legal issue, serious fault or irregularity of proceedings, non-reviewability or unlawful rejection or discontinuation of proceedings. Cassation complaints are inadmissible if submitted against statements of costs or reasonings only, against judgements of the courts of the first instance if these courts follow the decision of *Nejvyšší správní soud* only (with the exception of non-compliance with binding legal opinion) and against procedural and temporary measures of courts of the first instance. Complainants must be represented by a counsel (usually attorney) if they, their members or employees are not lawyers with university degree in law. Cassation

complaints shall be submitted to regional or city court which issued contested decision. Cassation complaints shall be submitted within two weeks after the delivery of the contested decision: default of time cannot be waived. Cassation complaint has not a suspensory effect in general; nevertheless, it can be awarded by *Nejvyšší správní soud* at request. It shall be accorded by interim decision of the Court if irreparable damage could result from execution of the decision and the award does not harm the acquired rights of third persons and does not conflict with the public interest.

[Proceedings on Cassation Complaints]

Parties of proceeding on cassation complaints are complainant on one hand and all participants of original proceedings (especially administrative authority) on the other hand. *Nejvyšší správní soud* usually decides on cassation complaints without hearing of parties. *Nejvyšší správní soud* is bound by the scope and reasonings of cassation complaint and shall ignore all additionally mentioned facts.

[Judgements and Decisions]

If *Nejvyšší správní soud* finds cassation complaint justified, it vacates (cancels) decision of the regional court (or the Prague City Court) by the means of judgement. Regional (city) court is bound by the legal position of *Nejvyšší správní soud* expressed in the judgement. *Nejvyšší správní soud* rejects the cassation complaint if it is unfounded.

[Cassation Complaints – Cases by Subject-Matter]

Approximately two-thirds of all cassation complaints submitted to *Nejvyšší správní soud* involve denials of Ministry of Interior to grant asylum. Its judicial capacity is almost exhausted with this subject-matter which enjoys priority. Other important subject-matters are social welfare and taxation. *Nejvyšší správní soud* decided 565 cassation complaints in 2003 and 2859 cassation complaints in 2004 (excluding numerous cases transferred by other courts according to transitional provisions of *Soudní rád správní* and huge procedural agenda). If compared with foreign supreme administrative jurisdictions, relatively few cases – if compared with administrative jurisdiction of other European states - deal with the supervision of economic activities or the legal protection of environment.

[Special Agenda]

Nejvyšší správní soud decides – as the court of the first resort - also electoral disputes and some matters of political parties and movements. It also decides competence contests of administrative authorities.

[Contribution to the Unification of Judicial Practice]

According to the Code of Administrative Justice, *Nejvyšší správní soud* is obliged to contribute to unity of decision-making of administrative judiciary as a whole. Special procedures serve for unification of divergent

case-law: decisions of extended benches and opinions of the divisions of the Court.

[Collection of Decisions]

Nejvyšší správní soud publishes a monthly collection of decisions (*Sbírka rozhodnutí Nejvyššího správního soudu*). Selected decisions of *Nejvyšší správní soud* and *krajské soudy* (regional courts) and approved opinions are incentive for uniform decision-making of lower courts and administrative authorities.

[Remedies against judgements of *Nejvyšší správní soud*]

The only extraordinary remedy against judgement of *Nejvyšší správní soud* is a constitutional complaint, submitted to *Ústavní soud* (Constitutional Court). Only infringements of basic human rights and freedoms or constitutionally based principles of government can be claimed. If the constitutional complaint is found justified, the decision of *Nejvyšší správní soud* will be annulled and the opinion of the *Ústavní soud* is binding for *Nejvyšší správní soud*. Failure of both constitutional and administrative judiciary can be regarded by the European Court of Human Rights as an infringement of international obligations of the Czech Republic, enshrined in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms.

[Czech administrative judiciary in the European Union]

The Czech Republic is a member state of the European Union since the 1st May 2004. According to the Treaty establishing the European Community and with regard to settled principles of the European Union law, highlighted in many judgements of the European Court of Justice, Czech administrative judiciary is called to apply European law and to cooperate with the European Court of Justice by means of references for preliminary rulings. *Nejvyšší správní soud* shall be regarded as the court of the last resort of Czech administrative judiciary. Therefore, references for preliminary ruling – if fixed criteria are fulfilled (absence of *acte clair* or *acte éclairé* and necessity of selecting an option of interpretation for the case) – are mandatory for the Court. *Nejvyšší správní soud* will certainly play an important role in adoption of the European Union law in Czech judiciary.

[Adress]

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